

Task Statement for Discussion of EEU Structure

The Energy Efficiency Utility ("EEU") has been in operation since March, 2000. The current EEU structure was the result of collaborative discussions that led to a comprehensive settlement among many parties, which the Board later approved. This structure has served Vermont well over the last seven years. The EEU's performance has exceeded expectations, and it has been recognized nationally as an innovative government program.

However, over that time the EEU program has matured, and the environment in which the EEU operates has changed. As a result, the Board has identified several aspects of the current EEU program structure that may require modification to address these circumstances. Specifically:

- ▶ The current three-year contract cycle is problematic because:
 - The regional forward capacity market requires bidding three years prior to the time of delivery. It is difficult for the EEU to participate when it must bid for a time period after the end of its current contract.
 - The last time the Board bid out the contract, it received only two bids. The fewer bids received, the less well the competitive bidding model works.
 - It is difficult for the EEU to engage in effective long-term planning when its contract extends for only three years.
 - It is difficult for any organization to compete effectively for employees when job stability is periodically at risk. The ability to attract and retain the most talented staff likely is enhanced by a model other than a short-term contract cycle.
- ▶ The fact that the Board oversees the EEU through a contract (regardless of the length of that contract) creates challenges:
 - Over the last seven years, the EEU program has become increasingly complex as the EEU has offered new services, including geographic targeting. As a result, it is worth addressing whether a contract model is still the appropriate model for overseeing a program of this size and complexity.
 - There has always been the potential for the Board's judicial role with respect to electric utilities to conflict with its administrative role with respect to the EEU. In addition, the Board interacts with the Department of Public Service ("DPS") differently when the Board is acting in its administrative role overseeing the EEU than when the Board is acting in its judicial capacity. In the past, the need to avoid ex parte communications has occasionally caused problems which were addressed by, among other solutions, Board staff leaving the room during contract negotiations so that conversations between the

Department of Public Service ("DPS") and the EEU contractor related to a contested case pending before the Board could occur. However, as the EEU is more fully integrated into utility planning efforts through activities such as geographic targeting and the Vermont System Planning Committee, the potential for such conflicts increases. This could make it increasingly difficult for the Board to function well in its role as contract manager.

- The potential for conflict regarding the Board's roles has been dealt with judicially by prohibiting the EEU from intervening as a party in proceedings before the Board. This was necessary to avoid even the perception of a conflict of interest related to the specific issues under discussion due to the Board's special contractual relationship with one party. Even though the Board has allowed the EEU to provide evidence regarding its operations, as the EEU is more fully integrated with utility planning efforts, the current restrictions on the EEU's participation in Board proceedings could become increasingly problematic.
- From the beginning of the EEU, the Board has restricted the EEU's ability to provide policy advice or lobby other entities because of the risk that the EEU, as the Board's contractor, could be perceived as speaking for the Board. When the regional forward capacity market was being developed, the Board loosened this restriction with respect to participation in NEPOOL and other regional market activities. However, even though the Board and the EEU coordinate regarding positions taken in the regional arena, the Board remains concerned about the potential for confusion about whether the EEU is speaking for itself, or for the Board as its contractor.

Charge for the Working Group

The broad charge for the discussion is to examine what type of alternative electric EEU structure would improve the aspects described above while preserving the strengths of the current EEU program. This charge includes consideration of the myriad of design details associated with a particular model, including legal, financial, operational, and transition issues.

The Board recognizes that each of the areas described above could be addressed in a variety of ways, but solutions to one area may not address the others.¹ It may be necessary to make tradeoffs; if so, the Board would like the discussion participants to articulate what those tradeoffs are.

While it would be desirable for the discussion participants to reach consensus regarding such an alternative, it is not necessary. Ultimately the Board will consider the recommendations of all participants and weigh the pros and cons of various options before determining whether to implement any changes that it currently has the authority to make, or to make any recommendations to the legislature regarding structural changes that the Board does not now have the authority to make.

¹For example, the three-year contract cycle could be addressed by lengthening the term of the Board's contract with the entity serving with the EEU, but that does not resolve the issues associated with the contractual nature of the Board's relationship with the EEU.